

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 1.25. Administrative Procedures--Hearings

Article 2. Administrative Hearing Procedures for Petitions for Review of Executive Officer Decisions

Subarticle 7. Hearings

§ 60055.32. Conduct of Hearing.

(a) The hearing shall be presided over by a hearing officer who shall conduct a fair and impartial hearing in which each party has a reasonable opportunity to be heard and to present evidence.

(b) The hearing shall be conducted in the English language.

(c) Subject to reasonable limitations that may be imposed by the hearing officer, each party to the proceeding shall have the right to:

(1) Call and examine witnesses;

(2) Introduce exhibits;

(3) Question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations;

(4) Impeach any witness regardless of which party first called the witness to testify; and

(5) Call and examine an opposing party as if under cross-examination, even if that party does not testify on his or her own behalf.

(d) Burden of Going Forth.

(1) The executive officer has the initial burden of presenting evidence that those parts of the executive officer decision specifically challenged in the petition for review are supported by the facts and applicable law.

(2) After the executive officer presents its evidence, the petitioner shall present documentation, testimony, or other evidence to support all claims made, including any affirmative defenses raised, that are pertinent to the issues presented to the hearing officer for determination.

(3) Subject to the hearing officer's authority under subparagraph (e)(1) below, at the close of the petitioner's presentation of evidence, the parties may present rebuttal evidence that is necessary to resolve disputed issues of material fact.

(e) The hearing officer may:

(1) Limit the number of witnesses and the scope and extent of any direct examination, cross-examination, or rebuttal testimony, as necessary, to protect the interests of justice and conduct a reasonably expeditious hearing;

(2) Require the authentication of any written exhibit or statement;

(3) Call and examine a party or witness and may, on his or her own motion, admit any relevant and material evidence;

(4) Exclude persons whose conduct impedes the orderly conduct of the hearing;

(5) Restrict attendance because of the physical limitations of the hearing facility; or

(6) Take other action to promote due process or the orderly conduct of the hearing.

(f) The taking of evidence in a hearing shall be controlled by the hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall define the issues and the order in which evidence will be received. The hearing officer shall have discretion to decide whether conferences and informal discussions necessary to facilitate the orderly and expeditious conduct of the case will be conducted in closed session and/or be recorded.

(g) Each matter in controversy shall be decided by the hearing officer upon a preponderance of the evidence test, unless otherwise provided under California law.

(h) Hearings shall be recorded electronically. The recording made by the Administrative Hearing Office shall be the official recording of the hearing.

(1) A verbatim transcript of the official recording will not normally be prepared, but may be ordered by the hearing officer if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered by the hearing officer, a party may, at its own expense, request that a verbatim transcript be made. The party making the request shall provide one copy to the hearing officer and one copy to every other party.

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(2) The official recording of the hearing and transcript of the recording, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); and Section 43105, Health and Safety Code.

REFERENCE